

(3) (3)
Nos. 84-744 and 84-963

Office - Supreme Court, U.S.
FILED
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In the Supreme Court of the United States

OCTOBER TERM, 1984

UNITED STATES OF AMERICA, PETITIONER

v.

JAMES C. LANE AND DENNIS R. LANE

JAMES C. LANE AND DENNIS R. LANE, PETITIONERS

v.

UNITED STATES OF AMERICA

**ON WRITS OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

JOINT APPENDIX

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United States of America

**PETITIONS FOR A WRIT OF CERTIORARI
FILED NOVEMBER 6, 1984, AND
DECEMBER 7, 1984
CERTIORARI GRANTED FEBRUARY 19, 1985**

25 182
3 foldouts

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TITLE: U.S.A. -VS- LANE, ET AL.

83-1742

1. RECORD, EXHIBITS AND BRIEF INFORMATION		Filing:	4. EXTENSION Fig. Motion for:	Order Fid.	Ext. to:
DEC 14 1983 Partial Record or Cert. List Record on Appeal Supp. Record Second Supp. Record Third Supp. Record Exhibits <input type="checkbox"/> Env. <input checked="" type="checkbox"/> Box <input type="checkbox"/> Pkg. <input type="checkbox"/> Roll Exhibits <input type="checkbox"/> Env. <input type="checkbox"/> Box <input type="checkbox"/> Pkg. <input type="checkbox"/> Roll Appendix <input type="checkbox"/> (P) <input type="checkbox"/> (M) Record Excerpts Supp. Certified List Briefing Notice Issd. Brief for Appellant 2-23-84 Brief for Appellant Brief for Appellant Brief for Cr. Appellant Brief for Appellee Brief for Appellee Brief for Appellee Brief for Cr. Appellee Reply Brief for Appellant Reply Brief for Cr. Appellant Supp. Brief for Appellant Supp. Brief for Appellee Brief for Amicus Intervenor Rule 28(j) letter—Appellant Rule 28(j) letter—Appellee		No. of Vols. 9 No. of Vols. No. of Vols. No. of Vols. <input type="checkbox"/> Pkg. <input type="checkbox"/> Roll <input type="checkbox"/> Pkg. <input type="checkbox"/> Roll <input type="checkbox"/> (M)	Transcript Transcript Transcript Appellant's Brief Appellant's Brief Appellant's Brief Appellee's Brief Appellee's Brief Appellee's Brief Reply Brief		
MAR 16 1984 Brief for Appellant Brief for Appellee Brief for Appellee Brief for Appellee Brief for Cr. Appellee Reply Brief for Appellant Reply Brief for Cr. Appellant Supp. Brief for Appellant Supp. Brief for Appellee Brief for Amicus Intervenor Rule 28(j) letter—Appellant Rule 28(j) letter—Appellee		No. of Vols. No. of Vols. No. of Vols. No. of Vols. <input type="checkbox"/> Pkg. <input type="checkbox"/> Roll <input type="checkbox"/> Pkg. <input type="checkbox"/> Roll <input type="checkbox"/> (M)	Appellee's Brief Appellee's Brief Appellee's Brief Reply Brief		
5. CALENDAR INFORMATION Special Panel Summary Panel: 3-9-84 Case Assigned for 4-16-84 in <input checked="" type="checkbox"/> EB <input type="checkbox"/> W <input type="checkbox"/> E <input type="checkbox"/> Case Cont'd for Reassignment Case Reassigned for _____ in _____ <input type="checkbox"/> EB <input type="checkbox"/> W <input type="checkbox"/> E <input type="checkbox"/> Hearing Panel: ILG-ABR-TMR 4-16-84 Case Argued <input checked="" type="checkbox"/> by Appellant <input checked="" type="checkbox"/> by Appellee Case Sub. w/o Arg. <input type="checkbox"/> by Appellant <input type="checkbox"/> by Appellee					
6. OPINION INFORMATION ✓ 6/18/84 Opinion Rendered <input type="checkbox"/> Affirmed <input type="checkbox"/> <input checked="" type="checkbox"/> ILG <input type="checkbox"/> Reversed <input type="checkbox"/> Affd. in Pt. <input type="checkbox"/> P.C. <input type="checkbox"/> Conc. Spec. <input type="checkbox"/> Vacated <input checked="" type="checkbox"/> XX Signed <input type="checkbox"/> Dis. <input type="checkbox"/> Dismissed <input type="checkbox"/> Rule 21 <input type="checkbox"/> Dis. in Pt. Opinion Withdrawn 4400					
7. REHEARING INFORMATION 6-29-84 Mot. for Ext.—Ext. to: 8-1-84 (usa) JUL 31 1984 Mot. for Ext.—Ext. to: (5) Petition for Rehearing <input type="checkbox"/> Appellant <input checked="" type="checkbox"/> Appellee <input type="checkbox"/> Reg. <input checked="" type="checkbox"/> En Banc Petition for Rehearing <input type="checkbox"/> Appellant <input type="checkbox"/> Appellee <input type="checkbox"/> Reg. <input type="checkbox"/> En Banc Response of _____ Order Denying Rehearing 08-22-84 <input type="checkbox"/> Dissenting <input type="checkbox"/> Opinion S9 <input type="checkbox"/> Order on Petition for Rehearing S9					
MISCELLANEOUS FILINGS 10/19/83 Dup. Notice of Appeal and Clerk's Statement of Docket Entries Papers Trans. from Misc. No. _____ Order of DC Granting Appeal IFP Order of DC Appointing Counsel Affidavit of Financial Status CJA 20 Issd./Voucher Recd. _____					
AGENCY REVIEW CASES Filing: Petition for Review of Order () of _____ <input type="checkbox"/> NLRB <input type="checkbox"/> FERC <input type="checkbox"/> ICC <input type="checkbox"/> Application for Enforcement—NLRB Answer to Application for Enforcement Cross Application for Enforcement					

Page 4 of 4 pages

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

UNITED STATES OF AMERICA

v.

JAMES C. LANE, JR.
DENNIS R. LANE

CR 2-83-012

RELEVANT DOCKET ENTRIES

06-08-83 Filed Sealed Indictment; issued Warrent.
06-08-83 Filed Return on Warrent, executed 6-9-83.
06-10-83 Filed Motion to Unseal Indictment.
06-15-83 Filed Order to Unseal Indictment. Indictment Unsealed cc attys)
06-15-83 Appearance Bond, debt placed on \$20,000 unsecured bond. (cc to USPO, USM, AUSA)
06-15-83 ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE, Debt released 6-9-83. (cc to USPO, USM, AUSA)
6-16-83 ORDER that cause is set for trial Tuesday, July 19, 1983 at 9:30 a.m. Docket Call will be Monday, July 18, 1983 at 9:30 a.m. All pre-trial motions shall be filed with the Court on or before June 29, 1983. (cc attys)
6-24-83 ORDER that motion cutoff is extended and dfts are instructed to file any pre-trial motions on or before July 8, 1983. (cc attys)
6-27-83 APPLICATION FOR WRIT OF HABEAS CORPUS AD TESTIFICANDUM (Heard)
6-27-83 APPLICATION FOR WRIT OF HABEAS CORPUS AD TESTIFICANDUM (Lankford)
6-27-83 ORDER that pre-trial motions are set for hearing July 12, 1983 at 9:30 a.m. At the same time the Court will hear the matter of the propriety of joint representation of dfts pur-

suant to FRCP 44 (c). (cc attys—mailed 6-27-83)

6-27-83 ORDER that the Clerk is ORDERED to issue a writ of habeas corpus ad testificandum direct to the USM Northern District of Texas, the Federal Correctional Institution, Big Spring, TX, directing said officers to have said witness before this Court at Amarillo, TX on July 11, 1983, and directing that said witness be produced from day to day for as long as necessary and thereafter to return said witness under safe and secure conduct to said witness's place of custody or other appropriate authority. (cc attys) Lankford

6-27-83 ORDER that Clerk is ORDERED to issue a writ of habeas corpus ad testificandum directed to the USM for Northern District and the FCI, Ft. Worth, TX directing said officers to have said witness before this Court at Amarillo, TX on July 11, 1983 and directing that said witness be produced from day to day for as long as necessary and then return said witness under safe and secure conduct to witness's place of custody or other appropriate authority. (cc attys) (Heard)

6-27-83 Issued WRIT OF HABEAS CORPUS AD TESTIFICANDUM to appear before the Court of the Northern District at Amarillo on July 11, 1983. For *Sidney Heard*

6-27-83 Issued WRIT OF HABEAS CORPUS AD TESTIFICANDUM to appear before the Court of the Northern District at Amarillo on July 11, 1983 For *William K. Langford* [sent cc of both writs to USM, Dallas, DUSM Ama, Director FCI Ft. Worth, AUSA Lubbock.]

7-8-83 Dft's MOTION TO DISMISS Indictment w/Order

7-8-83 Dft's MEMO of Points and Authorities in Support of MO To Dismiss The Indictment

7-8-83 Dft's MO For Discovery and Inspection w/Order
 7-8-83 Dft's BRIEF In Support of MO For Discovery and Inspection
 7-8-83 Dft's MO For Disclosure by Prosecution of Evidence Favorable to the Accused w/Order
 7-8-83 Dft's MO, James and Dennis, For Discovery of Grand Jury Testimony, w/Order
 7-8-83 BRIEF In Support of MO For Discovery of Grand Jury Testimony
 7-8-83 Dft James C. Lane's MO For Severance of Dfts w/Order
 7-8-83 MEMO OF LAW In Support of MO For Severance of Dfts
 7-8-83 Dfts' James and Dennis, MO For Separate Hearing to Determine the Existence of a Conspiracy or For Ordering Proof (ORder)
 7-8-83 MEMO in Support of Dfts' MO For Separate Hearing to Determine the Existence of a Conspiracy or For Ordering Proof
 7-8-83 First MO For Continuance of Dfts and Waiver of Speedy Trial w/Order
 7-8-83 MO For Bill Of Particulars w/Order
 7-8-83 MO For Severance and Separate Trial w/Order
 7-8-83 MEMO In Support of Severance
 7-8-83 Dfts James and Dennis MO For Enlargement of Time Within Which To File Additional Motions w/Order
 7-8-83 MEMO in Support of Defts' MO For Enlargement of Time Within Which To File Additional Motions.
 7-11-83 Government's Response to Dfts/ MO for Discovery & Inspection
 7-11-83 Government's Response to Dfts' Mo for Disclosure by prosecution of evidence favorable to the accused.
 7-11-83 Government's Response to Dfts' Mo to Dismiss Indict.

7-11-83 Government's Response to Dfts' Mo for Bill of Particulars
 7-11-83 Government's Response to Dft J.C. Lane, Jr.'s Mo for Severance and Separate Trials
 7-11-83 Government's Response to Dfts' Motion for Severance of Dfts.
 **7-8-83 (Filed in Lubbock) Government's MO TO INSTRUCT ATTYS, PARTIES, AND WITNESSES CONCERNING EXTRAJUDICIAL COMMUNICATIONS (ORDER)
 **7-8-83 (Filed in Lubbock) MEMORANDUM IN SUPPORT OF GOV'T'S MO TO INSTRUCT ATTYS, PARTIES & WITNESSES CONCERNING EXTRAJUDICIAL COMMUNICATIONS
 **7-8-83 (Filed in Lubbock) Gov't's MO FOR PRODUCTION, DISCOVERY & INSPECTION OF DEFTS' EVIDENCE. (ORDER)
 **7-8-83 (Filed in Lubbock) Brief in Support of Gov't's Mo for Reciprocal Discovery.
 7-11-83 Government's MOTION IN LIMINE w/Order ref. _____
 7-11-83 BRIEF In Support of Government's MO in Limine
 7-11-83 ORDER that dfts' Mo for Enlargement of Time within which to file additional motions is DENIED. (cc attys all attys called except Mr. Brown, unable to reach)
 7-12-83 Government's Response to Dfts' James & Dennis, MO for Separate Hearing to Determine the Existence of a Conspiracy Or For Ordering Proof.
 7-12-83 Government's Response to Dft Dennis Lane's MO for Severance of Dfts.
 7-12-83 Hearing before the Court on Motions (1 hour)
 7-12-83 ORDER that (1) Mo of US to Instruct attys, parties, and witnesses concerning extra-

judicial communications is granted and all parties are instructed not to communicate with the news media concerning the case without prior notice and approval by this Court; (2) Mo in Limine is Granted; (3) Motion for production, discovery and inspection of dft's evidence is granted; (4) Mo of dfts for disclosure by the prosecution is granted; (5) Mo of dfts for a Bill of Particulars is Denied; (6) Mo for discovery and inspection is Granted; (7) dfts' Mo for separte hearing to determine the existence of a conspiracy or for ordering proof is Granted; (8) Mo for severance and separate trial is Denied; (9) Mo of dft James C. Lane, Jr. for severance of his trial is Denied; (10) Mo of dft Dennis R. Lane for severance is Denied; (11) dfts' Mo to Dismiss Indictment is Denied; (12) Mo of dft for a continuance scheduled on July 18, 1983 is denied but that case is set for trial on August 1, 1983. (cc attys—hand delivered to attys).

- 7-12-83 ORDER that dfts each expressly waived their right to separate representation. The Court finds that they have made a knowing and intelligent waiver and it is therefore, accepted. (cc attys)
- 7-26-83 Government's Response to Dfts' Amended MO To Dismiss Indictment.
- 7-26-83 Application for Permission to File Amended Motion to Dismiss Indictment
- 7-26-83 ORDER that dfts' application for permission to file an amended motion to dismiss indictment is GRANTED. (cc attys)
- 7-26-83 Amended Motion to Dismiss Indictment.
- 7-26-83 Memorandum of Authorities in support of Amended Motion to dismiss the Indictment.
- 8-1-83 Renewed Motion for Severance and Separate Trial prior to trial w/Order

- 8-1-83 Request to the Honorable Mary Lou Robinson, presiding Judge, to Interrogate the Jury.
- 8-1-83 Dft's Motion for Individual voir dire of jurors exposed to publicity w/Order
- 8-1-83 Memorandum in Support of dfts' Motion for Individual voir dire of jurors exposed to publicity
- 8-1-83 Dfts' Motion to Suppress Tape recordings w/Order
- 8-1-83 Dfts' Motion to Impeach w/Order
- 8-1-83 Memorandum in Support of Dfts' Motion to Impeach
- 8-1-83 Govt's Witness List
- 8-1-83 Govt's Exhibit List
- 8-1-83 Rec'd Govt's Requested Voir Dire Questions to Jury
- 8-1-83 Rec'd Govt's Requested Instructions
- 8-1-83 MOTION To Limit Number of Character Witness
- 8-1-83 ORDER that Motion to Dismiss Indictment is DENIED. (cc handed to attys in Courtroom)
- 8-1-83 Voir Dire
Re-arraignment—Indictment read; Dfts plead Not Guilty
Panel of 12 seated; 2 alternates
Jury Trial begins (6 days)
- 8-1-83 Dfts' Memorandum in Support of Mo to Suppress Tape Recordings.
- 8-4-83 RETURN on subpoena served on Officer Larry Garrett on 8-4-83
RETURN on subpoena served on Officer Kenneth Tenbrink on 8-4-83
- 8-4-83 Rec'd Dfts Requested Charges/ handed to Judge
- 8-4-83 Renewed Motion for Severance and Separate Trial at close of Govt's evidence.
- 8-4-83 Motion for Judgment of Acquittal at close of Govt Evidence. w/Order

Memorandum in Support of dfts' motion for
Judgment of Acquittal

- 8-4-83 ORDER that dfts' Motion for Judgment of Acquittal at close of govt's evidence is entered in relation to each Count of the Indictment DENIED as to Ct. 1; DENIED as to Ct. 2; DENIED as to Ct. 3; DENIED as to Ct. 4; DENIED as to Ct. 5; DENIED as to Ct. 6; as to those counts where the Court has overruled said motion, the dfts in open court excepted. (cc attys)
- 8-8-83 ORDER that requested instructions 1-13 were requested 8-5-83 and are ordered filed. (cc attys)
- 8-8-83 Court's Instructions to the Jury
Verdict of the Jury (GUILTY as to all counts)
New acco
-
- 8-11-83 Dfts/ Post-Trial Motion for Judgment of Acquittal w/Order
- 8-12-83 ORDER that motion for post = trial judgment of acquittal is DENIED (cc attys)
- 8-12-83 RETURN On Subpoena to Testify served on following named persons:
Earl D. Simpson 6-28-83
Ernest Luker 8-3-83
Radford J. Barrett 7-28-83
David Lard 6-28-83
Jack Stotts 6-28-83
Cecila Gail Mitchell 6-28-83
Sgt. M.G. Holmes 6-28-83
Joe Hart 6-28-83
Lesa Arterburn 6-28-83
Morris H. Loewenstern 6-28-83
William R. Taylor 6-29-83
Charles L. Baylor 6-28-83
Custodian Records/Texas Bank 6-29-83
Thomas V. McAlexander 6-28-83
Shirley Fielding 7-12-83

- Andrew Lawson 7-8-83
Norman E. Adams 7-5-83
Custodian records/Tascosa Nat'l Bk 7-6-83
Earl D. Simpson 7-6-83
Ray Thompson 7-5-83
Ben Shaw 7-5-83
Sam B. Stewart 7-5-83
Janie Malone 7-5-83
Arch R. Moseley 6
28-83
William H. Liles 7-8-83
Roy Dwayne McDowell 7-26-83
Jerry Lehnick 7-28-83
Custodian records/Laramie Travelodge 7-8-83
Steve Messenger 7-28-83
Cindy Wright 7-28-83
David Morrow 7-25-83
- 8-15-83 Dfts' Motion for New Trial.
- 8-16-83 ORDER that Dfts' Motion for New Trial is DENIED. (cc attys)
- 8-22-83 Return on Writ of H/C Ad Testificandum of **William K. Lankford** and **Sidney Heard**.
- 10-7-83 JUDGMENT AND COMMITMENT ORDER (MLR) that dft is 24 years of age at date of conviction and is eligible for handling under FYCA (18 U.S.C. §§ 5005-5024)
Dft is committed to the custody of AG on each of the five counts of the indictment under provisions of YCA; all counts to run concurrent.
- 10-17-83 Notice of Appeal
- 12-5-83 Reporter's Transcript (6 volumes)
Reporter's Transcript of Proceedings PreTrial Hearing (1 volume)
- 12-9-83 Transmitted file to 5th Circuit consisting of 2 Volumes pleadings, 6 Volumes Transcript, 1 Volume Pretrial Hearing Transcript and 2 containers of Exhibits. (cc ltr only to attys)

6-18-84 JUDGMENT that cause is reversed and re-
manded to U.S. Dist. Ct.
ISSUED AS MANDATE: July 11, 1984
Slip Opinion.

7-30-84 Returned pleadings, transcript and exhibits per
5th Cir. request.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

Criminal No. CR 2-83-01
[Filed June 8, 1983]

UNITED STATES OF AMERICA

v.

JAMES C. LANE, JR.
DENNIS R. LANE

The Grand Jury Charges:

COUNT 1

A. Introduction

1. Beginning on or about January 1, 1979, and continuing thereafter until on or about November 1, 1979, in the Amarillo Division of the Northern District of Texas, and elsewhere, the defendant, JAMES C. LANE, JR. knowingly devised and intended to devise a scheme and artifice to defraud and obtain money from Transamerica Insurance Group by means of false and fraudulent representations, well knowing at the time that such representations would be and were false and fraudulent when made.

2. At all material times herein, Transamerica Insurance Group was in the business of issuing policies of insurance generally providing for payment of claims to insured persons and entities as a result of bona fide losses incurred due to damage and destruction of insured property by fire.

3. It was part of the scheme and artifice to defraud and to obtain money by means of false and fraudulent representations, that:

(a) JAMES C. LANE, JR., defendant, caused a building located at 323 West 10th Street, Amarillo, Texas and its contents to be damaged by fire on or about February 28, 1979.

(b) JAMES C. LANE, JR., defendant, received and negotiated a draft issued by Transamerica Insurance Group,

Number 6739211, dated 04-23-79, in the amount of \$10,000.00, payable to El Toro Restaurant.

(c) JAMES C. LANE, JR., defendant, received and negotiated a draft issued by Transamerica Group, Number 6833400, dated 11-01-79, in the amount of \$2,699.00, payable to El Toro Restaurant.

B. On or about June 1, 1979, in the Northern District of Texas, JAMES C. LANE, JR., defendant, for the purpose of executing the aforesaid scheme and artifice to defraud, and to obtain money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, wilfully and knowingly caused to be placed in an authorized depository for mail matter in the Amarillo Division of the Northern District of Texas, an envelope addressed to Transamerica Insurance Group, 4230 LBJ Freeway, Suite 600, Dallas, Texas 75234, which envelope contained a letter addressed to Transamerica Insurance Services, Dallas Branch, dated 6-1-79, signed by D. Lard and a letter addressed to Transamerica Insurance, signed by J. C. Lane, Jr., dated May 23, 1979, such envelope and contents to be sent and delivered by the United States Postal Service.

A violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 2

A. Introduction

1. Beginning on or about January 1, 1980, and continuing thereafter until on or about December 31, 1980, in the Amarillo division of the Northern District of Texas, and elsewhere, JAMES C. LANE, JR., and DENNIS R. LANE, defendants, knowingly devised and intended to devise a scheme and artifice to defraud and to obtain money from Trinity Universal Insurance Company, by means of false and fraudulent representations, well knowing at the time that such representations would be and were false and fraudulent when made.

2. At all material times herein, Trinity Universal Insurance Company was in the business of issuing policies of insurance generally providing for payment of claims to insured

persons and entities as a result of bona fide losses incurred due to damage and destruction of insured property by fire.

3. It was part of the scheme and artifice to defraud and to obtain money by means of false and fraudulent representations, that:

(a) JAMES C. LANE, JR., and DENNIS R. LANE, defendants, caused a house located at 1105 South Jackson Street, Amarillo, Texas, and its contents to be damaged by fire on or about May 1, 1980.

(b) DENNIS R. LANE, defendant, and Andrew Lawson, doing business as L & L Properties submitted Proof of Loss forms to Trinity Universal Insurance Company and were paid a total of \$24,250.00, as a result of the fire at 1105 South Jackson Street, Amarillo, Texas.

4. It was a further part of said scheme and artifice to defraud, that the defendants would and did obtain money from Trinity Universal Insurance Company by means of false, fraudulent, misleading pretenses and representations, well knowing at the time that the pretenses and representations would be and were false, fraudulent, and misleading when made, and such false, fraudulent, and misleading misrepresentations included, but were not limited to the following:

(a) DENNIS R. LANE, defendant, represented that the fire occurring at 1105 South Jackson Street, Amarillo, Texas, did not originate by any act, design or procurement of the insured and that no attempt had been made to deceive the insurance company as to the extent of the loss which resulted from the fire.

(b) JAMES C. LANE, Jr., and DENNIS R. LANE, defendants, submitted false invoices to Trinity Universal Insurance Company in support of the insurance claim to falsely represent that Trim-Tex had sold to L & L Properties, materials in the amount of \$4,223.23 for the repair of the house at 1105 South Jackson Street, Amarillo, Texas.

B. On or about May 15, 1980, in the Amarillo Division of the Northern District of Texas, JAMES C. LANE, JR., and DENNIS R. LANE, defendants, for the purpose of executing the aforesaid scheme and artifice to defraud, and to obtain money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to

do so, wilfully and knowingly caused to be placed in an authorized depository for mail matter in the Amarillo Division of the Northern District of Texas, an envelope addressed to Trinity Universal Insurance Company, P.O. Box 225028, Dallas, Texas 75265, which envelope contained a report dated 5-15-80, signed by William H. Liles, a property loss notice concerning the fire at 1105 S. Jackson, Amarillo, Texas, dated 5-2-80, photographs, a floor plan diagram, and a partial proof of loss for \$7,000.00, dated 5-9-80, signed by Dennis Lane and Andrew Lawson, such envelope and contents to be sent and delivered by the United States Postal Service.

A violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 3

1. The Grand Jury realleges all of the allegations of the Introduction of Count 2 of this indictment.

2. On or about August 6, 1980, in the Amarillo Division of the Northern District of Texas, JAMES C. LANE, JR., and DENNIS R. LANE, defendants, for the purpose of executing the aforesaid scheme and artifice to defraud, and to obtain money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, wilfully and knowingly caused to be placed in an authorized depository for mail matter in the Amarillo Division of the Northern District of Texas, an envelope addressed to Trinity Universal Insurance Company, P.O. Box 225028, Dallas, Texas 75265, which envelope contained a memo from Bill Liles, dated 8-6-80, and Proof of Loss forms in the amount of \$3,000.00 and \$2,000.00 signed by Dennis Lane, such envelope and contents to be sent and delivered by the United States Postal Service.

A violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 4

1. The Grand Jury realleges all of the allegations of the Introduction of Count 2 of this indictment.

2. On or about September 18, 1980, in the Amarillo Division of the Northern District of Texas, JAMES C. LANE,

JR., and DENNIS R. LANE, defendants, for the purpose of executing the aforesaid scheme and artifice to defraud, and to obtain money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, wilfully and knowingly caused to be placed an authorized depository for mail matter in the Amarillo Division of the Northern District of Texas, an envelope addressed to Trinity Universal Insurance Company, P.O. Box 225028, Dallas, Texas 75265, which envelope contained a memo from Bill Liles, dated 9-18-80, and bills concerning the repair and replacement of various items as a result of the fire at 1105 S. Jackson, Amarillo, Texas, such envelope and contents to be sent and delivered by the United States Postal Service.

A violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 5

A. Beginning on or about May 1, 1980, and continuing thereafter until on or about March 25, 1981, in the Amarillo Division of the Northern District of Texas, and elsewhere, JAMES C. LANE, JR., DENNIS R. LANE, defendants, and others did unlawfully, knowingly, and wilfully combine, conspire, confederate, and agree together, with each other, and with other persons to commit certain offenses against the United States Code.

B. In order to effect the objects of the conspiracy, the defendants, JAMES C. LANE, JR., and DENNIS R. LANE, employed the following manner and means:

1. One or more of the conspirators would lease a building in Lubbock, Texas to open a flower shop.

2. One or more of the conspirators would furnish artificial flowers to stock the flower shop.

3. One or more of the conspirators would furnish false invoices to inflate the value of the inventory at the flower shop.

4. One or more of the conspirators would obtain insurance coverage on the inflated value of the inventory at the flower shop.

5. One or more of the conspirators would cause a fire to destroy the contents of the flower shop in order to submit an insurance claim and collect the insurance proceeds.

C. JAMES C. LANE, JR., and DENNIS R. LANE, defendants, and others, in furtherance of said conspiracy and to effect the objects thereof, did commit the following overt acts:

1. About May, 1980, Sidney J. Heard, William K. Lankford, and Dennis R. Lane met at L & L Designs, Amarillo, Texas, to discuss a scheme to defraud an insurance company.

2. On or about July 10, 1980, DENNIS R. LANE leased a building at 3602 Avenue A, Lubbock, Texas.

3. On or about July 29, 1980, DENNIS R. LANE and JAMES C. LANE, JR., signed a lease agreement and mailed it to Carolyn Moseley, 3602 Avenue A, Lubbock, Texas, on or about August 1, 1980.

4. About August, 1980, William K. Lankford delivered flower arrangements and related materials to DENNIS R. LANE at 3602 Avenue A, Lubbock, Texas.

5. On or about September 1, 1980, William K. Lankford, in Amarillo, Texas, prepared L & L Designs, Inc. invoice number 320, in the amount of \$2,509.30 to Lane's Flower Design, 3602 Avenue A, Lubbock, Texas and gave the invoice to Sidney J. Heard for delivery to DENNIS R. LANE.

6. In October, 1980, William K. Lankford, in Amarillo, Texas, prepared five fictitious invoices to Lane's Flower Design, 3602 Avenue A, Lubbock, Texas, to inflate the value of the inventory.

7. On or about November 10, 1980, JAMES C. LANE, JR., contracted Sam Stewart of Stewart Insurance Agency, Claude, Texas to arrange for insurance coverage on the inventory of Lane's Flower Design, 3602 Avenue A, Lubbock, Texas, in the amount of \$50,000.00, with American States Insurance Company.

8 On or about November 12, 1980, William K. Lankford, in Amarillo, Texas, prepared invoice number 376, in the amount of \$20,213.70, to Lane's Flower Design, 3602 Avenue A, Lubbock, Texas and a General Promissory Note to reflect a debt of \$20,213.70.

9. On or about November 12, 1980, William K. Lankford delivered invoice number 376 and the General Promissory Note in the amount of \$20,213.70 to the residence of Sidney J. Heard in Amarillo, Texas.

10. On or about December 9, 1980, DENNIS R. LANE issued check number 1067 on account number 05-689-8, styled L & L Properties, at Tascosa National Bank, Amarillo, Texas, in the amount of \$125.40, made payable to Stewart Insurance.

A violation of Title 18, United States Code, Section 371.

COUNT 6

1. On or about May 12, 1981, in the Amarillo Division of the Northern District of Texas, DENNIS R. LANE, defendant, while under oath in a proceeding before the Grand Jury of the United States of America, duly impaneled and sworn in the United States District Court for the Northern District of Texas, knowingly did make a false material declaration, that is to say:

2. At the time and place aforesaid, the Grand Jury was conducting an investigation to determine whether or not there had been committed in the Northern District of Texas violations of mail fraud and conspiracy in violation of Title 18, United States Code, Sections 1341 and 371 and other criminal statutes of the United States.

3. It was material to the aforesaid investigation to determine whether or not Sidney Heard was associated with DENNIS R. LANE, defendant, and William K. Lankford, in establishing a flower shop in Lubbock, Texas, that was to be burned as part of a scheme to obtain the insurance on the contents of the said flower shop.

4. At the time and place aforesaid, DENNIS R. LANE, defendant, while under oath, did knowingly declare before the said Grand Jury with respect to the aforesaid material matter, as follows:

Q. Did Mr. Heard have anything to do with this flower shop?

A. No, sir.

Q. Did he have anything to do with your dealings with Mr. Lankford?

A. No, sir.

5. The aforesaid testimony of DENNIS R. LANE, defendant, as he then and there well knew and believed, was false in that between on or about May 1, 1980, and on or about March 25, 1981, DENNIS R. LANE, defendant, and William K. Lankford were associated with Sidney Heard in establishing a flower shop in Lubbock, Texas, as part of a scheme to defraud by burning this said flower shop and falsely collecting on the insurance policy covering the contents of the said flower shop.

All in violation of Title 18, United States Code, Section 1623.

A TRUE BILL

FOREMAN

/S/ James A. Rolfe
JAMES A. ROLFE
United States Attorney

/S/ Roger L. McRoberts
ROGER L. MCROBERTS
Assistant United States Attorney
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[95]

* * * * *

THE COURT:

Ladies and Gentlemen of the Jury, you've been hearing some evidence concerning a restaurant called El Toro. Now, you are instructed that you'll not consider the evidence with regard to El Toro when you consider the charges against Dennis A. Lane ... is it Dennis A. or Dennis R.?

MR. BROWN: Dennis R., Your Honor.

THE COURT: You'll not consider that evidence in [96] considering the changes against Dennis R. Lane.

[984]

* * * * *

Now, as you know, there are two Defendants on trial here: James C. Lane, Jr., and Dennis R. Lane.

[985] They are being tried together because they are both charged in Counts 2 through 5 of the indictment.

Nevertheless, each Defendant is entitled to have his case decided just on the evidence which applies to him.

Some of the evidence in this case was limited to one of the Defendants and can not be considered in the case of the other.

The testimony that you heard concerning a fire at El Toro may not be considered as any evidence of the guilt of the Defendant, Dennis R. Lane.

You may not consider it in any way when you are deciding whether the Government has proved, beyond a reasonable doubt, that the Defendant Dennis R. Lane, committed the crimes charged in Counts 2 through 6 of the indictment.

Now, if the Government fails to prove any one of the necessary elements of any count, as to any Defendant charged in that count, beyond a reasonable doubt, then you should acquit that Defendant as to that count and find him not guilty as to that count.

* * * * *

[964] Now, the Defendants are charged in Counts 1, 2, 3 and 4 of the indictment with having violated Title 18, United States Code, Sections 1341 and 2. Section 1341 of Title 18,

United States Code, provided in its essential part that: Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises ... for the purpose of executing such scheme or [965] artifice or attempting to do so, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Post Office Department shall be guilty of an offense against the laws of the United States.

Section 2 of Title 18, United States Code, reads in its essential part that (a) Whoever commits an offense against the United States or aides, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever wilfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

Now, in reading this, it said the Defendants are charged in Counts 1, 2, 3 and 4 of the indictment. Actually, of course, Dennis R. Lane is not charged in Count 1 of the indictment. Both Defendants are charged in Counts 2, 3 and 4 of the indictment.

Now, as to Counts 1, 2, 3 and 4 in the indictment, it is necessary that the Government prove from the evidence beyond a reasonable doubt that (1) The Defendants wilfully and knowingly devised a scheme or artifice to defraud, or for the obtaining of money or property by means of false pretenses, representations, [966] or promises, and (2) The Defendants used the United States Postal Service by mailing, or causing to be mailed, some matter or thing for the purpose of executing the scheme to defraud.

The words "scheme" and "artifice" include any plan or course of action intended to deceive others, and to obtain, by false or fraudulent pretenses, representations, or promises, money or property from persons so deceived.

Now, a statement or representation is "false" or "fraudulent" within the meaning of this statute if it relates to a material fact and is known to be untrue or is made with reckless indifference as to the truth or falsity, and is made or caused to be made with intent to defraud.

Now, a statement or representation may also be "false" or "fraudulent" when it constitutes a half truth, or effectively conceals a material fact, with intent to defraud.

Now, a "material fact" is a fact that would be important to a reasonable person in deciding whether to engage or not to engage in a particular transaction.

Now, to act with "intent to defraud" means to act knowingly and with the specific intent to deceive, ordinarily for the purpose of causing some financial [967] loss to another or bringing about some financial gain to one's self.

It is not necessary that the Government prove all of the details alleged in the purpose of the scheme; or that the material mailed was itself false or fraudulent; or that the alleged scheme actually succeeded in defrauding anyone; or that the use of the mail was intended as the specific or exclusive means of accomplishing the alleged fraud.

What must be proved beyond a reasonable doubt is that the accused knowingly and wilfully devised or intended to devise a scheme to defraud substantially the same as the one alleged in the indictment; and that the use of the United States mails was closely related to the scheme in that the accused either mailed something or caused it to be mailed in an attempt to execute or carry out the scheme.

Now, to "cause" the mails to be used is to do an act with knowledge that the use of the mails will follow in the ordinary course of the business or where such use can reasonably be foreseen.

Now, each separate use of the mails in furtherance of a scheme to defraud constitutes a separate offense.

Now, to use the mail can not be for the purpose of executing such scheme as alleged in the indictment, [968] if the alleged scheme in its entirety was completed prior to the mailing alleged in the indictment.

Therefore, if you find from the evidence beyond a reasonable doubt that the Defendants devised and intended to devise a scheme or artifice to defraud, or to obtain money by means of false or fraudulent pretenses, representations or promises, as alleged in the indictment, but if you further find from a preponderance of the evidence, that the alleged scheme in its entirety had been completed prior to the al-

leged mailing, so that the use of the mail, if any, by the Defendants, was not for the purpose of executing the scheme, or if this evidence causes you to have a reasonable doubt, you shall acquit the Defendants, and say by your verdict, "not guilty."

Now, however, mailings made to promote the scheme or which relate to the acceptance of the proceeds of the scheme or which facilitate concealment of the scheme are mailings in furtherance of the scheme.

* * * * *

Supreme Court of the United States

No. 84-744

UNITED STATES, PETITIONER,

v.

JAMES C. LANE AND DENNIS R. LANE

ORDER ALLOWING CERTIORARI.

Filed February 19, 1985.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted. This case is consolidated with case No. 84-963, *James C. Lane and Dennis R. Lane v. United States*, and a total of one hour is allotted for oral argument.

Justice Powell took no part in the consideration or decision of this petition.

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